



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2013-0290 and EPA-HQ-OAR-2013-0291; FRL-9946-63-OAR]

**NESHAP for Brick and Structural Clay Products Manufacturing; and
NESHAP for Clay Ceramics Manufacturing**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of action denying in part and granting in part petitions for reconsideration.

SUMMARY: This action provides notice that the U.S. Environmental Protection Agency (EPA) Administrator, Gina McCarthy, denied in part and granted in part petitions for reconsideration of the final National Emission Standards for Hazardous Air Pollutants (NESHAP) for Brick and Structural Clay Products (BSCP) Manufacturing and the final NESHAP for Clay Ceramics Manufacturing published in the **Federal Register** on October 26, 2015.

DATES: This action is effective on **[insert date of publication in the Federal Register]**.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Nizich, Minerals and Manufacturing Group, Sector Policies and Programs Division (D243-04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-2825; email address: nizich.sharon@epa.gov.

SUPPLEMENTARY INFORMATION:

I. How can I get copies of this document and other related information?

This **Federal Register** notice, the petitions for reconsideration, and the letters and accompanying enclosures addressing the petitions for reconsideration are available in the dockets the EPA established under Docket ID No. EPA-HQ-OAR-2013-0291 for BSCP Manufacturing and Docket ID No. EPA-HQ-OAR-2013-0290 for Clay Ceramics Manufacturing.

All documents in the dockets are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Docket Center (EPA/DC), EPA WJC West Building, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Air Docket is (202) 566-1742. This **Federal Register** document, the petitions for reconsideration, and the letters with the

accompanying enclosure addressing the petitions can also be found on the EPA's Web site at <http://www.epa.gov/ttn/oarpg>.

II. Judicial Review

Section 307(b)(1) of the Clean Air Act (CAA) indicates which Federal Courts of Appeals have venue for petitions for review of final EPA actions. This section provides, in part, that the petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if: (i) the agency action consists of "nationally applicable regulations promulgated, or final action taken, by the Administrator," or (ii) such actions are locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

The EPA has determined that its denial of the petitions for reconsideration is nationally applicable for purposes of CAA section 307(b)(1) because the actions directly affect the BSCP Manufacturing NESHAP and Clay Ceramics Manufacturing NESHAP, which are nationally applicable regulations. Thus, any petitions for review of the letters and enclosures denying the petitions for reconsideration described in this document must be filed in the United States Court of Appeals for the District of Columbia Circuit by **[insert date 60 days after date of publication in the Federal Register]**.

To the extent that EPA is granting the petitions for reconsideration with respect to certain issues, such grant is not final agency action, but only begins an agency process to consider whether the rule should be revised. If EPA in the future takes final agency action to revise the rule, notice of such action will be published in the Federal Register and judicial review will be available at that time.

III. Description of Action

The initial NESHAP for BSCP Manufacturing and initial NESHAP for Clay Ceramics Manufacturing were published in the **Federal Register** on May 16, 2003 (68 FR 26690), and codified at 40 CFR part 63, subparts JJJJJ and KKKKK, respectively, pursuant to section 112 of the CAA. Those standards were challenged and subsequently vacated by the United States Court of Appeals for the District of Columbia Circuit in 2007. See *Sierra Club v. EPA*, 479 F.3d 875, 876 (D.C. Cir. 2007). Following the 2007 vacatur of the 2003 rule, the EPA collected additional data and information to support new standards for the BSCP and clay ceramics industries. This information is contained in the dockets for both rules, which are available at <http://www.regulations.gov>. On December 18, 2014, the EPA proposed new NESHAP for BSCP Manufacturing and for Clay Ceramics Manufacturing (79 FR 75622). The EPA received additional data and comments during the public comment period. These data and

comments were considered and analyzed and, where appropriate, revisions to the two NESHAP were made. The NESHAP for BSCP Manufacturing and NESHAP for Clay Ceramics Manufacturing were finalized on October 26, 2015 (80 FR 65470).

On December 23, 2015, Kohler Company submitted a petition for reconsideration of the final rule for Clay Ceramics Manufacturing (80 FR 65470). In support of its petition, Kohler Company claimed that: (1) the final rule introduced new stack temperature monitoring requirements for demonstrating compliance with the dioxin/furan emission limits without an opportunity for comment by the petitioner; (2) the EPA failed to adequately respond to the petitioner's public comments regarding visible emissions monitoring in the response to comments and final rule; (3) the EPA should reconsider its exclusion of emissions averaging from the final rule as a compliance option for clay ceramics manufacturing; (4) the EPA should reconsider its improper use of scrubber emissions data from the petitioner's South Carolina Kiln 10 for determining the maximum achievable control technology (MACT) floor; (5) the EPA should reconsider the frequency of onerous and unnecessary visual inspection requirements for system ductwork and control device equipment for water curtain spray booths; and (6) the EPA should clarify the testing threshold for cooling stacks to be tested to limit

it to those stacks with an oxygen content at or below 20.4 percent.

Also on December 23, 2015, the Brick Industry Association (BIA) submitted a petition for reconsideration of the final rule for BSCP Manufacturing (80 FR 65470). In support of its petition, the BIA claimed that: (1) the EPA failed to give notice that it would change its method for calculating the existing source MACT floor for emissions of non-mercury (Hg) hazardous air pollutant (HAP) metals; (2) the EPA incorrectly used tests conducted below capacity in its revised MACT floor approach; (3) the EPA failed to give notice that it would include a variability calculation in its determination of the MACT floor for Hg or how it would make this variability calculation; (4) it was impracticable for the petitioner to request a variability factor for non-Hg metal emission limits for the final rule; and (5) the EPA failed to give notice that it would include opacity as a compliance method for the non-Hg HAP metals standard.

On December 24, 2015, the Tile Council of North America, Inc. (TCNA) and its members submitted a petition for reconsideration of the final rule for Clay Ceramics Manufacturing (80 FR 65470). In support of its petition, the TCNA claimed that: (1) in promulgating the final rule, the EPA relied on legal positions/rationales for regulating ceramic tile

that were advanced for the first time in the preamble to the final rule; (2) for the final rule, the EPA introduced for the first time the technical rationale that Method 23 field blank spike recoveries self-validate the dioxin/furan emissions data used to set dioxin/furan standards; and (3) the EPA failed to respond to public comments regarding the cost of the final rule to those sources that the EPA postulates might at some time in the future become subject to the rule.

Section 307(d) (7) (B) of the CAA sets forth the criteria for reconsideration. That section states that "(o)nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impractical to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same

procedural rights as would have been afforded had the information been available at the time the rule was proposed.”

The EPA has carefully considered the petitions and supporting information. In separate letters to the petitioners, the EPA Administrator, Gina McCarthy, denied in part and granted in part the Kohler Company petition, denied the BIA and TCNA petitions, and explained the reasons for the denials. These letters and the accompanying enclosures are available in the dockets for this action.

IV. Conclusion

For the reasons discussed in the letters and accompanying enclosure to the petitioners, the petitions to reconsider the final NESHAP for BSCP Manufacturing and final NESHAP for Clay Ceramics Manufacturing are denied in part and granted in part.

Dated: May 12, 2016.

Gina McCarthy,
Administrator.

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